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Uniform State Laws Proposed in 1939

By CHARLES H. QUEARY*

THE NATIONAL CONFERENCE of Commissioners on Uniform State Laws convened its forty-ninth annual meeting at San Francisco, California, July 3, 1939. The National Conference consists of three or more commissioners from each of the states, the territories of Alaska, Hawaii, Philippine Islands and Puerto Rico, and the District of Columbia, appointed by the governors of the states and territories and the president of the United States for the District of Columbia. Seventy-one commissioners, representing forty-one states and territories, were in attendance at the conference. The National Conference includes among its members many who are outstanding as educators, legal authorities and technical experts in the drafting of laws.

The object of the National Conference is to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practical. The work of the conference is accomplished through standing and special committees. The standing Committee on Scope and Program must approve all proposals of subjects of legislation before the same are referred to special committees with instructions to report drafts of acts. Tentative drafts of approved subjects are submitted by the committees from year to year and are discussed by the conference in its Committee of the Whole at its annual meetings. A uniform act approved by the National Conference is thus the result of a study of tentative drafts, subject to the criticism, correction and emendation of the collective commissioners who represent the experience and judgment of a select body of lawyers chosen from every part of the United States and its territories.

Since its organization in 1892, the National Conference of Commissioners on Uniform State Laws has drafted and approved ninety-three acts. Some of these acts have become obsolete, others have been combined, and at the present time seventy-seven acts stand as recommended for adoption by the legislative bodies of the states and territories. The General Assembly of Colorado has approved twelve of

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these acts—the best known of which are the Negotiable Instruments Act, the Partnership Acts, and the Warehouse Receipts Act.

At its 1939 meeting the National Conference approved six acts which will be urged for adoption by the forthcoming regular sessions of the legislative bodies of the states and territories. A brief summary of the purposes of the proposed acts is included here.

UNIFORM ACT RELATING TO ACKNOWLEDGMENTS OF WRITTEN INSTRUMENTS.

The Uniform Acknowledgment Act is the result of the rewriting of two former acts approved by the conference, eliminating confusion occasioned by their contradictory provisions. The act merely provides that where by the law of the state an acknowledgment of an instrument is required to be made it may be made in the manner and form either provided for by existing state statute or in the manner and form prescribed by the act. There is no attempt to say what instruments shall be acknowledged and no attempt is made to repeal the existing state laws on the subject, the act being permissive in that the acknowledgment may be made in either form. The act provides for acknowledgment within the state of acknowledgments made in other states in prescribed manner. There is a necessity and demand for a more modern enactment of acknowledgments in many of the states and more uniformity on the subject in all of the states. The act will provide both without disturbing the existing law of the states which desire to adopt it.

UNIFORM ACT PROVIDING FOR EVIDENTIAL EFFECT OF ABSENCE AS EVIDENCE OF DEATH AND FOR THE DISPOSITION OF PROPERTY OF ABSENTEES UNHEARD OF FOR A PERIOD OF YEARS.

We are all familiar with many cases where persons have disappeared, leaving families and property, and have been unheard of for a period of years although diligent search and inquiry have been made. In such cases there is a very practical side of the picture to be considered. As long as it is unknown whether the absentee be living or dead, rights must remain uncertain and property remain undistributed. This practical situation has been met in many states by the enactment of statutes providing that upon the disappearance, continuous and un-

explained, of persons owning property for a certain period (usually seven years) the death of such person will be presumed. Many of the states have no such statute, the courts recognizing common law presumption of death arising from the unexplained absence of a person from his place of residence for seven years, subject to rebuttal. The National Conference believes that the seven year absence rule is arbitrary, founded upon no reason, and is obstructive to the ascertainment of rights and disposition of property. The basis of the uniform act is to cease attempting to solve a problem which in its nature is insolvable by an arbitrary rule of evidence, and to fix by statute a certain and definite rule for the disposition of the property of the absentee unheard of after a lapse of time, after diligent search and inquiry, and this regardless of the period of absence and without regard to whether the absentee is living or dead. The act corrects an intolerable situation resulting from absence of an individual, unexplained, continuous, unheard of, leaving a family to be supported, debts to be paid and collected, life insurance to be paid, and a business to be carried on. The situation calls for a remedy and the act provides it.

UNIFORM ACT GOVERNING SECURED CREDITORS' DIVIDENDS IN LIQUIDATION PROCEEDINGS.

Four varied rules concerning the treatment of secured creditors in liquidation proceedings have been evolved by the courts. Eight states have adopted the bankruptcy rule making disposition upon the face of the claim less the value of the collateral. Ten states have approved the Maryland plan, adopting as a basis the balance owing at the time of declaring each dividend, crediting only amounts realized from collateral. Two states follow the Illinois rule—the balance owing at the time of presenting the claim without deduction for collateral. The United States and eighteen states have followed the equity rule using the balance owing at the time of transfer in insolvency, without deduction for collateral as a basis. In no state does the scope of legislation include all types of liquidation proceedings. States which have enacted statutes have all adopted the principle of the bankruptcy rule, and legislation on the subject in all English speaking countries has generally followed the principle of the bankruptcy rule. The rule used vitally affects the adequacy of security and the evaluation of other claims, present or prospective. Uniformity is desirable for the benefit

of interstate business generally. The proposed uniform act adopts the principle of the bankruptcy rule as being the only one likely to be generally accepted by the legislatures of the several states.

UNIFORM ACT CONCERNING THE LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS DOING BUSINESS IN MORE THAN ONE STATE.

The forced liquidation or reorganization of many insurance companies in recent years has brought to light certain problems peculiar to the liquidation of businesses having assets and liabilities distributed in two or more states. Assets take the form generally of special deposits required by state laws, balances in the hands of insurance agents, policy premiums due but unpaid, and investment of reserve funds. Liabilities consist primarily of policy obligations distributed over the several states in which the companies do business. This wide distribution of assets and liabilities creates many problems. The equitable and expeditious solution of these problems is rendered more difficult because of wide differences in the provisions of state statutes regarding deposits, preferred claims, securities, set off, and the administrative and judicial procedures followed. If statutory means can be provided which will eradicate these difficulties, they will be of great service. It is proposed to accomplish this by presenting a properly formulated uniform act containing appropriate reciprocal provisions. It is believed that a general adoption of the act will greatly facilitate proceedings commenced for the liquidation, rehabilitation or reorganization of insurance companies and will promote the equitable distribution of the assets of defunct insurers.

UNIFORM ACT CONCERNING CONTRIBUTION AMONG TORTFEASORS, RELEASE OF TORTFEASORS, PROCEDURE ENABLING RECOVERY OF CONTRIBUTION.

It is fundamental that there should be an equal or proportionate distribution of a common burden among those upon whom the burden rests. If one discharges a common burden, it is natural that his claim against others so burdened for contribution to the discharge shall be recognized. It is apparent that an injury resulting from the joint tort of two or more persons involves each of them, jointly and severally,

in liability for the entire damage. This appears to be a typical instance of the discharge of a common liability to be governed by the principle of contribution. But the policy of the Anglo-American common law has been to deny assistance to tortfeasors on the understanding that they are wrongdoers and hence not deserving of the aid of courts in achieving equal or proportionate distribution of the common burden. Most joint and several tort liability results from inadvertently caused damage, although it is almost impossible to draw a practical line between torts of inadvertence and others. The situation is aggravated by the common law view that the injured person may place the loss where and how he sees fit. He cannot be compelled to take judgment against tortfeasors whom he does not wish to sue. By refusing to sue or take judgment against one or more tortfeasors commonly liable, the injured person may confer immunity from contribution and at the same time secure complete compensation from the luckless tortfeasor whom he wishes to make liable. It is apparent that there is a necessity for the establishment of a uniform and common policy of contribution and responsibility, and this has been adopted and embodied in the proposed uniform statute.

UNIFORM ACT PROVIDING FOR PERIODS OF LIMITATION WITHIN WHICH ACTIONS MAY BE COMMENCED IN THE COURTS OF THIS STATE.

Numerous studies have disclosed the utmost diversity in the laws of the several states relative to periods of limitation. There appears to be no great difference in the public policy of the states relative to the subject matter. In the proposed uniform act procedural matters therefore have been avoided and no attempt is made in the act to define those events which start or suspend the running of the period. The act avoids the prescribing of methods of pleading the bar of the statute. The act only attempts to make uniform the period of limitations for classes of actions. It is believed that this will be welcomed by business interests.

All of the foregoing acts have had the approval of the American Bar Association, and, where related, of the National Association of Insurance Commissioners and the American Law Institute.*

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